



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

July 7, 2008

The Honorable Timothy S. Bee
President
Arizona State Senate
1700 W. Washington
Phoenix, Arizona 85007

Re: Senate Bill 1406; Municipal Development Fees; Procedures

Dear President Bee,

Today I vetoed Senate Bill 1406, which would have placed further restrictions on municipalities that seek to make developers of new growth assist in paying the public costs of growth through the use of development fees.

Every legislative session, developers propose new procedural changes to the way municipalities may calculate, schedule or collect development fees. Rather than address these issues on a piecemeal basis as we have in the past, we should work on comprehensive procedures for the fair imposition of development fees. Such fees should create predictability for developers, provide needed public services more quickly and more equitably distribute the cost of new public services.

Arizona would benefit if an agreed upon, comprehensive approach to development fees would be considered during the next regular legislative session.

In the meantime, I have vetoed Senate Bill 1406. I look forward to working with all the interested parties as, together, we move forward.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano".

Janet Napolitano
Governor

JN:LK

cc: The Honorable Jim Weiers

House Engrossed Senate Bill

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1406

AN ACT

AMENDING SECTIONS 9-463.05 AND 11-1102, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL DEVELOPMENT FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to read:

9-463.05. Development fees; imposition by cities and towns;
infrastructure improvements plan; annual report;
limitation on actions; definitions

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing, other capital costs and associated appurtenances, equipment, vehicles, furnishings and other personalty.

B. Development fees assessed by a municipality under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or amended pursuant to subsection D of this section shall be used to provide the same category of necessary public service for which the development fee was assessed FOR THE BENEFIT OF THE SAME AREA, AS DEFINED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN, WITHIN WHICH THE DEVELOPMENT FEE WAS ASSESSED. Interest earned on monies in the separate fund shall be credited to the fund.

3. The schedule for payment of fees shall be provided by the municipality. BASED ON THE COST IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN, the municipality shall provide a credit toward the payment of a development fee for the required OR AGREED TO dedication of public sites, improvements and other necessary public services included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.

4. The amount of any development fees assessed pursuant to this section must bear a reasonable relationship to the burden imposed ~~upon~~ ON the municipality to provide additional necessary public services to the

1 development. The municipality, ~~in determining the extent of the burden~~
2 ~~imposed by the development,~~ shall consider, among other things, FORECAST the
3 contribution ~~made or~~ to be made in the future in cash or by taxes, fees, or
4 assessments by OR OTHER SOURCES OF REVENUE DERIVED FROM the property owner
5 towards the capital costs of the necessary public service covered by the
6 development fee AND SHALL INCLUDE THESE CONTRIBUTIONS IN DETERMINING THE
7 EXTENT OF THE BURDEN IMPOSED BY THE DEVELOPMENT.

8 5. If development fees are assessed by a municipality, such fees shall
9 be assessed in a nondiscriminatory manner.

10 6. In determining and assessing a development fee applying to land in
11 a community facilities district established under title 48, chapter 4,
12 article 6, the municipality shall take into account all public infrastructure
13 provided by the district and capital costs paid by the district for necessary
14 public services and shall not assess a portion of the development fee based
15 on the infrastructure or costs.

16 C. A municipality shall give at least sixty days' advance notice of
17 intention to assess a new or modified development fee and shall release to
18 the public a written report that identifies the methodology for calculating
19 the amount of the development fee, explains the relationship between the
20 development fee and the infrastructure improvements plan, includes
21 documentation that supports the assessment of a new or modified development
22 fee and identifies any index or indices to be used for automatic adjustment
23 of the development fee pursuant to subsection F- G of this section and the
24 timing of those adjustments. The municipality shall conduct a public hearing
25 on the proposed new or modified development fee at any time after the
26 expiration of the sixty day notice of intention to assess a new or modified
27 development fee and at least thirty days prior to the scheduled date of
28 adoption of the new or modified fee by the governing body. A development fee
29 assessed pursuant to this section shall not be effective until seventy-five
30 days after its formal adoption by the governing body of the municipality.
31 Nothing in this subsection shall affect any development fee adopted prior to
32 July 24, 1982.

33 D. Before the assessment of a new or modified development fee, the
34 governing body of the municipality shall adopt or amend an infrastructure
35 improvements plan. The municipality shall conduct a public hearing on the
36 infrastructure improvements plan at least thirty days before the adoption or
37 amendment of the plan. The municipality shall release the plan to the
38 public, make available to the public the documents used to prepare the plan
39 and provide public notice at least sixty days before the public hearing,
40 subject to the following:

41 1. An infrastructure improvements plan may be adopted concurrently
42 with the report required by subsection C of this section, and the
43 municipality may provide for and schedule the notices and hearings required
44 by this subsection together with the notices and hearings required by
45 subsection C of this section.

1 2. A municipality may amend an infrastructure improvements plan
2 without a public hearing if the amendment addresses only elements of
3 necessary public services that are included in the existing infrastructure
4 improvements plan. The municipality shall provide public notice of those
5 amendments at least fourteen days in advance of their effective date.

6 E. For each necessary public service that is the subject of a
7 development fee, the infrastructure improvements plan shall:

8 1. Estimate future necessary public services that will be required as
9 a result of new development IN THE AREA, AS DEFINED IN THE INFRASTRUCTURE
10 IMPROVEMENTS PLAN, WITHIN WHICH THE DEVELOPMENT FEE WILL BE ASSESSED and the
11 basis for the estimate, INCLUDING A COMPARISON OF THE NECESSARY PUBLIC
12 SERVICES PROVIDED TO EXISTING DEVELOPMENT AND THE NECESSARY PUBLIC SERVICES
13 TO BE PROVIDED TO NEW DEVELOPMENT.

14 2. Forecast the costs of infrastructure, improvements, real property,
15 financing, other capital costs and associated appurtenances, equipment,
16 vehicles, furnishings and other personalty that will be associated with
17 meeting those future needs for necessary public services.

18 3. FORECAST THE REVENUE SOURCES THAT WILL BE AVAILABLE TO FUND THE
19 NECESSARY PUBLIC SERVICES and estimate the time required to finance and
20 provide the necessary public services.

21 F. EXCEPT FOR ADJUSTMENTS PURSUANT TO SUBSECTION G OF THIS SECTION, A
22 MUNICIPALITY'S DEVELOPMENT FEE ORDINANCE SHALL PROVIDE THAT A NEW DEVELOPMENT
23 FEE OR AN INCREASED PORTION OF A MODIFIED DEVELOPMENT FEE SHALL NOT BE
24 ASSESSED AGAINST A DEVELOPMENT FOR TWENTY-FOUR MONTHS AFTER THE DATE OF THE
25 MUNICIPALITY'S FINAL APPROVAL OF THE DEVELOPMENT, PROVIDED THAT NO MATERIAL
26 CHANGES ARE MADE TO THE SITE PLAN OR SUBDIVISION PLAT THAT WAS THE SUBJECT OF
27 THE FINAL APPROVAL. THE TWENTY-FOUR MONTH PERIOD SHALL NOT BE EXTENDED BY A
28 RENEWAL OR AMENDMENT OF THE SITE PLAN OR THE FINAL SUBDIVISION PLAT THAT WAS
29 THE SUBJECT OF THE FINAL APPROVAL. THE MUNICIPALITY SHALL ISSUE, ON REQUEST,
30 A WRITTEN STATEMENT OF THE DEVELOPMENT FEE SCHEDULE APPLICABLE TO THE
31 DEVELOPMENT.

32 ~~F.~~ G. A municipality may automatically adjust a development fee on an
33 annual basis without a public hearing if the adjustment is based on a
34 nationally recognized index applicable to the cost of the necessary public
35 service that is the subject of the development fee and the adjustment
36 mechanism is identified in the report required by subsection C of this
37 section. The municipality shall provide public notice of those adjustments
38 at least thirty days in advance of their effective date.

39 ~~G.~~ H. Each municipality that assesses development fees shall submit
40 an annual report accounting for the collection and use of the fees. The
41 annual report shall include the following:

42 1. The amount assessed by the municipality for each type of
43 development fee.

44 2. The balance of each fund maintained for each type of development
45 fee assessed as of the beginning and end of the fiscal year.

1 3. The amount of interest or other earnings on the monies in each fund
2 as of the end of the fiscal year.

3 4. The amount of development fee monies used to repay:

4 (a) Bonds issued by the municipality to pay the cost of a capital
5 improvement project that is the subject of a development fee assessment.

6 (b) Monies advanced by the municipality from funds other than the
7 funds established for development fees in order to pay the cost of a capital
8 improvement project that is the subject of a development fee assessment.

9 5. The amount of development fee monies spent on each capital
10 improvement project that is the subject of a development fee assessment and
11 the physical location of each capital improvement project.

12 6. The amount of development fee monies spent for each purpose other
13 than a capital improvement project that is the subject of a development fee
14 assessment.

15 ~~H.~~ I. Within ninety days following the end of each fiscal year, each
16 municipality shall submit a copy of the annual report to the city
17 clerk. Copies shall be made available to the public on request. The annual
18 report may contain financial information that has not been audited.

19 ~~I.~~ J. A municipality that fails to file the report required by this
20 section shall not collect development fees until the report is filed.

21 ~~J.~~ K. Any action to collect a development fee shall be commenced
22 within two years after the obligation to pay the fee accrues.

23 ~~K.~~ L. For the purposes of this section,—:

24 1. "FINAL APPROVAL" MEANS:

25 (a) FOR A NONRESIDENTIAL OR MULTIFAMILY DEVELOPMENT, THE APPROVAL OF A
26 SITE PLAN OR, IF NO SITE PLAN IS SUBMITTED FOR THE DEVELOPMENT, THE APPROVAL
27 OF A FINAL SUBDIVISION PLAT.

28 (b) FOR A SINGLE FAMILY RESIDENTIAL DEVELOPMENT, THE APPROVAL OF A
29 FINAL SUBDIVISION PLAT.

30 2. "Infrastructure improvements plan" means one or more written plans
31 that individually or collectively identify each public service that is
32 proposed to be the subject of a development fee and otherwise complies with
33 the requirements of this section, and may be the municipality's capital
34 improvements plan.

35 Sec. 2. Section 11-1102, Arizona Revised Statutes, is amended to read:

36 11-1102. County development fees; annual report

37 A. If a county has adopted a capital improvements plan, the county may
38 assess development fees within the covered planning area in order to offset
39 the capital costs for water, sewer, streets, parks and public safety
40 facilities determined by the plan to be necessary for public services
41 provided by the county to a development in the planning area.

42 B. Development fees assessed under this section are subject to the
43 following requirements:

44 1. Development fees shall result in a beneficial use to the
45 development.

1 2. Monies received from development fees shall be placed in a separate
2 fund and accounted for separately and may only be used for the purposes
3 authorized by this section. Interest earned on monies in the separate fund
4 shall be credited to the fund.

5 3. The county shall prescribe the schedule for paying the development
6 fees. The county shall provide a credit toward the payment of the fee for
7 the required dedication of public sites and improvements provided by the
8 developer for which that fee is assessed. The developer of residential
9 dwelling units shall be required to pay the fees when construction permits
10 for the dwelling units are issued.

11 4. The amount of any development fees must bear a reasonable
12 relationship to the burden of capital costs imposed on the county to provide
13 additional necessary public services to the development. In determining the
14 extent of the burden imposed by the development, the county shall consider,
15 among other things, the contribution made or to be made in the future in cash
16 by taxes, fees or assessments by the property owner toward the capital costs
17 of the necessary public service covered by the development fee.

18 5. Development fees shall be assessed in a nondiscriminatory manner.

19 6. In determining and assessing a development fee applying to land in
20 a community facilities district established under title 48, chapter 4,
21 article 6, the county shall take into account all public infrastructure
22 provided by the district and capital costs paid by the district for necessary
23 public services and shall not assess a portion of the development fee based
24 on the infrastructure or costs.

25 7. THE COUNTY SHALL NOT ASSESS OR COLLECT DEVELOPMENT FEES FROM A
26 SCHOOL DISTRICT OR CHARTER SCHOOL, OTHER THAN FEES ASSESSED OR COLLECTED FOR
27 STREETS AND WATER AND SEWER UTILITY FUNCTIONS.

28 C. Before assessing or increasing a development fee, the county shall:

29 1. Give at least one hundred twenty days' advance notice of intention
30 to assess a new or increased development fee.

31 2. Release to the public a written report including all documentation
32 that supports the assessment of a new or increased development fee.

33 3. Conduct a public hearing on the proposed new or increased
34 development fee at any time after the expiration of the one hundred twenty
35 day notice of intention to assess a new or increased development fee and at
36 least fourteen days before the scheduled date of adoption of the new or
37 increased fee.

38 D. A development fee assessed pursuant to this section is not
39 effective for at least ninety days after its formal adoption by the board of
40 supervisors.

41 E. Each county that assesses development fees shall submit an annual
42 report accounting for the collection and use of the fees. The annual report
43 shall include the following:

44 1. The amount assessed by the county for each type of development fee.

1 2. The balance of each fund maintained for each type of development
2 fee assessed as of the beginning and end of the fiscal year.

3 3. The amount of interest or other earnings on the monies in each fund
4 as of the end of the fiscal year.

5 4. The amount of development fee monies used to repay:

6 (a) Bonds issued by the county to pay the cost of a capital
7 improvement project that is the subject of a development fee assessment.

8 (b) Monies advanced by the county from funds other than the funds
9 established for development fees in order to pay the cost of a capital
10 improvement project that is the subject of a development fee assessment.

11 5. The amount of development fee monies spent on each capital
12 improvement project that is the subject of a development fee assessment and
13 the physical location of each capital improvement project.

14 6. The amount of development fee monies spent for each purpose other
15 than a capital improvement project that is the subject of a development fee
16 assessment.

17 F. Within ninety days following the end of each fiscal year, each
18 county shall submit a copy of the annual report to the clerk of the board of
19 supervisors. Copies shall be made available to the public on request. The
20 annual report may contain financial information that has not been audited.

21 G. A county that fails to file the report required by this section
22 shall not collect development fees until the report is filed.

23 H. This section does not affect any development fee adopted before May
24 18, 2000.

25 Sec. 3. Applicability

26 Section 9-463.05, subsection F, Arizona Revised Statutes, as amended by
27 this act, does not apply to any development that received its final approval
28 before January 1, 2009.

29 Sec. 4. Effective date

30 Section 9-463.05, Arizona Revised Statutes, as amended by this act, is
31 effective from and after December 31, 2008.

Passed the House May 28, 20 08,

by the following vote: 36 Ayes,

23 Nays, 1 Not Voting



Speaker of the House
Pro Tempore



Assistant Chief Clerk of the House

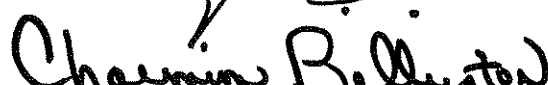
Passed the Senate March 20, 20 08,

by the following vote: 25 Ayes,

3 Nays, 2 Not Voting



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1406

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate June 26, 20 08

by the following vote: 23 Ayes,

2 Nays, 5 Not Voting

Timothy S. Bee
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

26 day of June, 20 08

at 4:30 o'clock p. M.

Jennifer Ibarra
Secretary to the Governor

Approved this _____ day of _____

at _____ **VETO** _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

^{Veto}
This Bill received by the Secretary of State

this 7th day of July, 20 08

S.B. 1406

at 1:53 o'clock p. M.

Janice K. Brewer
Secretary of State